

# Nadler Chairs Judiciary Hearing on Ensuring Justice for Victims of the Gulf Coast Oil Disaster

Wednesday, 21 July 2010

WASHINGTON, D.C. - Today, Congressman Jerrold Nadler (D-NY), Chair of the House Judiciary Subcommittee on the Constitution, Civil Rights and Civil Liberties, chaired a Judiciary Committee hearing on Ensuring Justice for Victims of the Gulf Coast Oil Disaster. The hearing, featuring Kenneth R. Feinberg, Claims Administrator of Gulf Coast Claims Facility, examined the details of the new Gulf Coast Claims facility and allowed Members to understand its scope and legal authority.

On April 20, 2010, the explosion on the Deepwater Horizon oil vessel in the Gulf of Mexico killed 11 crew workers and created a massive environmental and economic disaster in the Gulf Coast region. Pursuant to the Oil Pollution Act of 1990 (OPA), BP was designated a responsible party that is strictly liable for removal costs and damages resulting from the oil spill. In order to comply with OPA, BP created a claims process that, as of July 14, 2010, had reportedly received 110,000 total claims and paid out \$183 million. Because of criticism that the BP claims process was opaque, slow, and unfair, the Administration and BP agreed to create the Gulf Coast Claims Facility, an independent claims process that will be administered by Kenneth Feinberg. The agreement also provided that BP would contribute \$20 billion over a four-year period to an escrow account that will be used to pay claims adjudicated by the Gulf Coast Claims Facility.

"As we pass the three month mark since this disaster began, the continuing efforts to stop the leak and clean the spill are paramount," said Nadler. "But, as the damage to natural resources, local economies, and daily lives continues to grow, we must be sure that the victims of this disaster can be made whole. The BP claims process so far has been plagued by problems, and many of those who have been harmed have not received adequate compensation in a timely fashion. I am especially concerned because the information we have received from BP - and, quite frankly, some of the federal and state agencies charged with protecting the environment and public health - has not flowed as freely as the oil from this well."

Below is Nadler's opening statement, as prepared:

"On April 20th, a series of explosions aboard the Deepwater Horizon, an oil rig drilling in mile-deep water in the Gulf of Mexico. The rig was drilling in BP's Macondo well project 42 miles southeast of Venice, Louisiana, beneath about 5,000 feet of water and 13,000 feet under the seabed.

"The leak resulting from this disaster has created the most massive environmental disaster in our nation's history, killing wildlife, destroying critical wetlands and fisheries, and wreaking economic havoc along the Gulf of Mexico. Eleven people died in the explosion, and the cost to human health will probably not be known for years.

"Even more disturbing, the response to the spill - including the use of toxic dispersants, and the secrecy and dissembling by BP - may have compounded the damage of the spill itself.

"On May 27, 2010, the Judiciary Committee held a hearing on the Legal Liability Issues Surrounding the Gulf Coast Oil Disaster. At that hearing, the Committee received testimony from victims, the responsible companies, and other experts about the outdated and unfair maritime liability regime that is denying justice to the victims of this disaster.

"After the hearing, I joined with the distinguished Chairman of the Full Committee in introducing H.R. 5503, the SPILL Act, a bill that fixes these laws so that the victims can be fairly compensated. The Committee favorably reported H.R. 5503 on June 23, 2010, and the bill passed the House on July 1, 2010 by voice vote.

"I hope that the SPILL Act will soon become law so that BP and the other corporations responsible for the Deepwater Horizon explosion and resulting oil spill will be held accountable under the law for all of the harm their reckless behavior has caused.

"Today, however, we turn our attention to ensuring justice for those trying to navigate the claims process set up by BP.

"The BP claims process so far has been plagued by problems, and many of those who have been harmed have not received adequate compensation in a timely fashion.

"Given the many problems with the BP claims process, I was encouraged to learn that on June 16th, the Administration and BP agreed to create the Gulf Coast Claims Facility, an independent claims process that will be administered by Kenneth Feinberg. BP has promised that this new independent claims facility will be 'fairer, faster, and more transparent in paying damage claims by individuals and businesses.'

"Mr. Feinberg has distinguished himself as the administrator of the Victims Compensation Fund set up by Congress to aid the victims of the 9/11 attacks. Thanks to his good work, many of my constituents were able to avail themselves of an administrative process that was fair and expeditious. He is an excellent choice.

"Furthermore, the Administration and BP announced that BP will establish a \$20 billion escrow account, which will be funded over a four year period at a rate of \$5 billion per year. They also announced that BP will contribute \$100 million to a foundation to support unemployed oil rig workers.

"While these announcements sound promising, there remain troubling issues about the details of the escrow account, the Gulf Coast Claims Facility, and the claims process.

"Even though it has been over a month since the announcement of the \$20 billion escrow account and the new claims facility, we have yet to see either the agreements setting up the escrow account or the final protocols that will be used to process claims.

"Among the concerns I have that I hope will be addressed at today's hearing:

- To what extent will the escrow fund be bankruptcy remote, and what guarantee can we have that the fund pledged will also be protected from becoming a part of a bankruptcy estate should BP seek bankruptcy protection?
- Will the Gulf Coast Claims Facility recognize claims relating to use of dispersants?
- Given that the long term effects of the oil spill and use of dispersants could be at least a 10 or 20 year event, what provision will be made for claimants who may, for example, seek compensation for economic loss, but whose medical conditions may not become manifest for 10 or 20 years? Will claimants have to waive the opportunity to seek compensation for latent injuries from BP or from other parties?
- Will injuries caused by dispersants be covered by the compensation fund?

- Will the Gulf Coast Claims Facility be willing to reopen resolved claims in the event that, for example, non-pecuniary damages under the SPILL Act become available for the victims of the explosion and their families?

"As we pass the three month mark since this disaster began, the continuing efforts to stop the leak and clean the spill are paramount. But, as the damage to natural resources, local economies, and daily lives continues to grow, we must be sure that the victims of this disaster can be made whole.

"As Mr. Feinberg knows, perhaps better than anyone else, the full impact of a catastrophe of this magnitude may not become evident for many years, and it is likely that these cases will have to be revisited at some point in the future. I do not want to see the taxpayers on the hook for this damage, and I do not want to see people with serious but not-yet-evident injuries have their rights and legitimate claims nullified in the future. How will this process account for latent claims so that the injured will not be left high and dry, or have to resort to the federal government to pay costs that rightly should be paid by BP?

"I am especially concerned because the information we have received from BP - and, quite frankly, some of the federal and state agencies charged with protecting the environment and public health - has not flowed as freely as the oil from this well. We now know that some of the information - such as the purported safety of the dispersants being used - has been demonstrably false.

"It's déjà vu all over again. Nearly a decade ago, EPA administrator Christine Todd Whitman falsely assured the public that the air near Ground Zero was safe. We are still paying for that deception. Some people are paying with their lives. I hope today's hearing will guide the creation of an independent, fair, and transparent victim compensation program.

"I look forward to hearing from our witness today as he helps us understand these important issues."